

H.R.1158

Biogas Production Incentive Act of 2009 (Introduced in House)
HR 1158 IH

111th CONGRESS
1st Session
H. R. 1158

To promote biogas production, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

February 24, 2009

Mr. HIGGINS (for himself, Mr. NUNES, Mr. KAGEN, Ms. KAPTUR, Mr. ROSKAM, Mr. KIND, Mr. GENE GREEN of Texas, Mr. TERRY, Mr. BOCCIERI, Mr. MCGOVERN, and Mr. DAVIS of Alabama) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To promote biogas production, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Biogas Production Incentive Act of 2009'.

SEC. 2. CREDIT FOR PRODUCTION OF BIOGAS FROM CERTAIN RENEWABLE FEEDSTOCK.

(a) In General- Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 45Q the following new section:

`SEC. 45R. BIOGAS PRODUCED FROM CERTAIN RENEWABLE FEEDSTOCK.

`(a) Amount of Credit- For purposes of section 38, the qualified biogas production credit for any taxable year is an amount equal to the product of--

`(1) \$4.27, and

`(2) each million British thermal units (mmBtu) of biogas--

`(A) produced by the taxpayer--

`(i) from qualified energy feedstock, and

`(ii) at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service, and

- `(B)(i) sold by the taxpayer to an unrelated person during the taxable year, or
- `(ii) used by the taxpayer as a fuel during the taxable year.
- `(b) Definitions- For purposes of this section--
- `(1) BIOGAS- The term `biogas' means a gas which--
- `(A) is derived by processing a qualified energy feedstock, and
- `(B) contains--
- `(i) at least 52 percent methane, and
- `(ii) carbon dioxide and trace gases.
- `(2) QUALIFIED ENERGY FEEDSTOCK-
- `(A) IN GENERAL- The term `qualified energy feedstock' means--
- `(i) manure of livestock (including any litter, wood shavings, straw, rice hulls, bedding material, and other materials incidentally collected with the manure),
- `(ii) any nonhazardous, organic agricultural or food industry byproduct or waste material (cellulosic or otherwise) derived from--
- `(I) renewable biomass,
- `(II) harvesting residue,
- `(III) any waste or byproduct from fermentation processes, ethanol production, biodiesel production, slaughter of livestock, food production, food processing, or food service, or
- `(IV) other organic wastes, byproducts, or sources,
- `(iii) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes, and tree trimmings,
- `(iv) agricultural or forestry crops, or
- `(v) landfill waste, sewage waste treatment materials, or other decaying organic materials.
- `(B) RENEWABLE BIOMASS- The term `renewable biomass' means materials from pre-commercial thinning or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that--
- `(i) are byproducts of preventive treatments that are removed--
- `(I) to reduce or contain disease or insect infestation, or
- `(II) to restore ecosystem health,
- `(ii) would not otherwise be used for higher-value products, and
- `(iii) are harvested in accordance with applicable law and land management plans and the requirements for--
- `(I) old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512), and
- `(II) large tree retention of subsection (f) of that section, or
- `(iv) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including--
- `(I) renewable plant material (such as feed grains, other agricultural commodities, other plants and trees, and algae), and
- `(II) waste material (such as crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts (including fats, oils, greases, and manure), food waste, and yard waste).
- `(C) LIVESTOCK- The term `livestock' includes poultry, cattle, sheep, swine, goats, horses,

mules, and other equines.

`(3) QUALIFIED FACILITY- The term `qualified facility' means a facility that--

`(A) uses anaerobic digesters or other biological, chemical, or thermal processes to convert qualified energy feedstock into biogas,

`(B) is owned by the taxpayer,

`(C) is located in the United States,

`(D) is originally placed in service after the date of the enactment of this section and before January 1, 2016, and

`(E) the biogas output of which is--

`(i) marketed through interconnection with a gas distribution or transmission pipeline,

`(ii) marketed as a gaseous or liquid fuel such as hydrogen or natural gas and then used as a fuel, or

`(iii) reasonably expected to be used in a quantity sufficient to offset the consumption of at least 5,000 mmBtu annually of commercially-marketed fuel derived from coal, crude oil, natural gas, propane, or other fossil fuel.

`(c) Special Rules- For purposes of this section--

`(1) INCREASED CREDIT FOR QUALIFIED CELLULOSIC ENERGY FEEDSTOCK-

`(A) IN GENERAL- In the case of biogas is produced from qualified cellulosic energy feedstock, subsection (a) shall be applied by substituting the dollar amount in effect for the taxable year under subsection (a)(1) with an amount equal to 125 percent of such dollar amount.

`(B) QUALIFIED CELLULOSIC ENERGY FEEDSTOCK- For purposes of subparagraph (A), the term `qualified cellulosic energy feedstock' means an qualified energy feedstock that is composed of any lignocellulosic or hemicellulosic matter.

`(2) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER- In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the qualified facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such qualified facility.

`(3) RELATED PERSONS- Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b). In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling biogas to an unrelated person if such biogas is sold to such a person by another member of such group.

`(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS- Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

`(5) COORDINATION WITH CREDIT FROM PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE- The amount of biogas produced and sold or used by the taxpayer during any taxable year which is taken into account under this section shall be reduced by the amount of biogas produced and sold by the taxpayer in such taxable year which is taken into account under section 45K.

`(6) COORDINATION WITH CREDIT FROM PRODUCING ELECTRICITY FROM RENEWABLE RESOURCES- The amount of biogas produced and sold or used by the taxpayer during any taxable year which is taken into account under this section shall be reduced by the amount of biogas produced and sold by the taxpayer in such taxable year which is taken into account under section 45.

`(7) CREDIT ELIGIBILITY IN THE CASE OF GOVERNMENT-OWNED FACILITIES- In the case of any facility producing biogas and that is owned by a governmental unit, subparagraph (B) of subsection (b)(3) shall be applied by substituting `is leased or operated by the taxpayer' for `is owned by the taxpayer'.

`(d) Transferability of Credit-

`(1) IN GENERAL- A taxpayer may transfer the credit under this section through an assignment to any person. Such transfer may be revoked only with the consent of the Secretary.

`(2) REGULATIONS- The Secretary shall prescribe such regulations as necessary to ensure that any credit transferred under paragraph (1) is claimed once and not reassigned by such other person.

`(e) Adjustment Based on Inflation-

`(1) IN GENERAL- The dollar amount under subsection (a)(1) shall be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 1 cent, such amount shall be rounded to the nearest multiple of 1 cent.

`(2) COMPUTATION OF INFLATION ADJUSTMENT FACTOR-

`(A) IN GENERAL- The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor in accordance with this paragraph.

`(B) INFLATION ADJUSTMENT FACTOR- The term `inflation adjustment factor' means, with respect to a calendar year, a fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for calendar year 2007. The term `GDP implicit price deflator' means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.'

(b) Credit Treated as Business Credit- Section 38(b) of the Internal Revenue Code of 1986 is amended by striking `plus' at the end of paragraph (34), by striking the period at the end of paragraph (35) and inserting `, plus', and by adding at the end the following new paragraph:

`(36) the qualified biogas production credit under section 45R(a).'

(c) Credit Allowed Against AMT- Section 38(c)(4)(B) of the Internal Revenue Code of 1986 is amended by striking `and' at the end of clause (vii), by striking the period at the end of clause (viii) and inserting `, and', and by adding at the end the following new clause:

`(ix) the credit determined under section 45R.'

(d) Clerical Amendment- The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

`Sec. 45R. Biogas produced from certain renewable feedstock.'

(e) Effective Date- The amendments made by this section shall apply to biogas produced and sold (or used) in taxable years beginning after the date of the enactment of this Act.

